

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**LANNIA PIPER**

Claimant

VS.

**RAY'S IGA**

Respondent

AND

**ARGONAUT GREAT CENTRAL INS. CO.**

Insurance Carrier

Docket No. 1,022,960

**ORDER**

Respondent and its insurance carrier (respondent) request review of the July 15, 2005 preliminary hearing Order entered by Administrative Law Judge (ALJ) Bryce D. Benedict.

**ISSUES**

The ALJ awarded claimant medical treatment for her thoracic symptoms with Dr. Stein as well as temporary total disability compensation beginning June 9, 2005 and to continue until claimant reaches maximum medical improvement, or is released to substantial and gainful employment. In doing so, the ALJ implicitly concluded claimant suffered an accident arising out of and in the course of her employment with respondent, resulting in an injury to her thoracic area. He also denied a request for a neurological consult relative to claimant's alleged multiple sclerosis (MS) complaints.

Respondent appealed this order contending that claimant failed to prove her upper back complaints are related to her October 28, 2004 injury. Put simply, respondent contends that because claimant's thoracic complaints came on weeks after her injury, they are unrelated to her October 28, 2004 accident. Thus, respondent contends that portion of the ALJ's Order which grants treatment for that condition should be reversed. Respondent does, however, believe that the ALJ was correct in denying claimant diagnostic tests or treatment for her alleged MS complaints.

Claimant contends that as her acute onset of neck and lower back complaints resolved, she began to experience a gradual onset of upper back pain even as she continued to work after her accident. Her upper back complaints are noted within the medical records beginning on December 17, 2004. Thus, she maintains she has met her burden of proof and the ALJ's preliminary hearing Order should be affirmed.

The only issue to be decided in this appeal is whether claimant's upper back complaints arose out of and in the course of her accidental injury of October 28, 2004.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant began working for Ray's IGA in 2000 in the deli department. On October 28, 2004 claimant tripped on a rug and fell while carrying food in the deli. When she fell she slid and hit her head and shoulders on a hot food case. According to her, "[i]t felt like a bolt of lightning went down to my head down to my tailbone and back up."<sup>1</sup> Claimant's supervisor was present and offered to help her. When claimant left work that day she had a stiff back, and her knees were hurting. Approximately a week later claimant informed her supervisor that she talked to Dr. John M. Kelley, her family physician, and that she was going to see him.

Dr. Kelley saw claimant on November 10, 2004 and diagnosed claimant with neck and low back pain secondary to fall-likely all musculoskeletal strain. X-rays were ordered to rule out bone injury and medication for pain and inflammation was prescribed. Dr. Kelley, or his physician's assistant, continued to see claimant through December 2004 and on into February 2005. On December 17, 2004, there is a notation that claimant's back pain was no longer improving and had moved between her shoulder blades, along with complaints of numbness and tingling in her hands and legs. Physical therapy was continued and claimant was referred to Dr. Jaime McAtee.

Dr. McAtee examined claimant and has opined that claimant sustained a lumbar strain. He did not think that her thoracic pain was related to her fall as claimant did not express any such complaints to him during her visit.

After her consultation with Dr. McAtee claimant was then referred to Dr. Nanda N. Kumar on March 7, 2005 for an EMG and nerve conduction study of her lower extremities. At that time, claimant reported tenderness over the parathoracic area on both sides and a slight antalgic gait. Her EMG and nerve study showed no damage. Claimant had an abnormal MRI result which prompted more testing to rule out MS or small microvascular

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<sup>1</sup> P.H. Trans. at 13-14.

insults. Dr. Kumar stated in his report that he was not sure if claimant had MS or not, and that he was not sure if claimant's accident had anything to do with the possible MS. He did recommend further testing to be certain of what was really going on and that until then did not want to administer any further treatment other than to refer claimant for pain management.<sup>2</sup>

Claimant was also seen by Dr. Paul S. Stein on June 7, 2005, at the request of her attorney. At this time her chief complaint was upper back pain between the shoulder blades. Dr. Stein concluded that claimant appeared to have sustained injury to the soft tissues in the upper back as a result of her fall. He indicated that claimant's discomfort began in her neck and lower back, but that these areas have resolved. He felt that claimant's prognosis was guarded as individuals with the type of discomfort she had found treatment difficult and often not rewarding. He also thought it possible in regard to the suggestion of possible MS, that claimant's accident and injury could have aggravated a dormant process since she was asymptomatic before, but that he would leave that for the neurologists to determine. As for treatment, he recommended trigger-point injections and physical therapy for the upper back discomfort and restricted claimant's activity involving the upper back and advised claimant to avoid repetitive or continuous work activity with the arms outstretched and to avoid repetitive overhead activity.<sup>3</sup>

Finally, claimant saw Dr. Phillip R. Mills on June 9, 2005. At this time claimant was complaining of sharp back pain with numbness and tingling. Claimant indicated to the doctor that she had problems sitting longer than 2 hours in the car, standing for prolonged times, lots of bending over and lifting over 10 pounds. Upon examination, Dr. Mills diagnosed claimant with low back pain from a fall which has now resolved, intrascapular pain from thoracic kyphosis, unrelated to the fall and MS unrelated to the fall. He felt claimant was at maximum medical improvement and based on the Fourth Edition of the *AMA Guides* and the DRE Lumbosacral Category I impairment for the LS spine injury assigned a 0 percent to the whole body.<sup>4</sup>

As a result of this claim, claimant was interviewed by an adjuster from respondent's insurance company. In this interview claimant indicated that at first she had pain in her neck and lower back, head, shoulder and arm basically all over, and that the first week after the accident she began having pain up and in between her shoulder blades.

The ALJ was persuaded that claimant's present complaints of pain in her thoracic area were attributable to her work-related accident. Certainly claimant's initial low back complaints have now resolved. But given the mechanism of injury, her indication that she

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<sup>2</sup> *Id.*, Cl. Ex. 2 (Dr. Kumar Report).

<sup>3</sup> *Id.*, Cl. Ex. 3 (Dr. Stein Report).

<sup>4</sup> *Id.*, Resp. Ex. A (Dr. Mills Report).

felt pain in her entire spine immediately after her accident, and claimant's testimony that her upper back complaints came on slowly support this conclusion. Thus, the ALJ's preliminary hearing Order is affirmed.

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bryce D. Benedict dated July 15, 2005, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of September, 2005.

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BOARD MEMBER

c: R. Todd King, Attorney for Claimant  
Kevin J. Kruse, Attorney for Respondent and its Insurance Carrier  
Bryce D. Benedict, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director